

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

Bayside Financial Corporation, and Thomas R.
Merritt, Designated Broker,

Respondents.

NO. C-03-019-03-SC01

STATEMENT OF CHARGES
and NOTICE OF INTENT TO REVOKE
LICENSE, PROHIBIT FROM PARTICIPATION
IN THE INDUSTRY, COLLECT PAST DUE
ASSESSMENTS, COLLECT EXAMINATION
FEES, AND IMPOSE MONETARY FINE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of January 29, 2003, the Director institutes this proceeding and finds as follows:

I. FACTS

1. Respondents:

A. Bayside Financial Corporation is licensed to conduct the business of a mortgage broker at:

17632 Irvine Blvd. Suite 200
Tustin, California 92780

B. Thomas R. Merritt was named designated broker on October 10, 2000, and has continued as designated broker to date.

2. License: The Department of Financial Institutions ("Department") issued a license to Bayside Financial Corporation as a mortgage broker on October 10, 2000.

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- 1 **3. State Corporate License:** Bayside Financial Corporation was incorporated to do business in the State
2 of Washington on June 5, 2000. The license of the corporation, issued by the Washington State Secretary of
3 State, expired on June 30, 2001. To date, Bayside Financial Corporation has not notified the Department of this
4 change in standing with the State of Washington Secretary of State.
- 5 **4. Continuing Education:** A certificate of satisfactory completion of an approved continuing education
6 course is due to the Department each year for Respondents, no later than the last business day of October. The
7 Respondents have not provided a certificate of satisfactory completion of an approved continuing education
8 course.
- 9 **5. Annual Assessment:** An annual assessment fee is due to the Department each year, no later than the last
10 business day of October. Respondents have not paid the annual assessment fee for 2001 in the amount of
11 \$513.95, which was due October 31, 2001. Respondents likewise have not paid the annual assessment fee for
12 2002 in the amount of \$530.86, which was due October 31, 2002.
- 13 **6. Issuance of Directive:** On October 17, 2002, the Department issued a directive to Respondents requiring
14 that Respondents pay the annual assessment fees and submit a certificate of satisfactory completion of an
15 approved continuing education course. To date, Respondents have failed to pay the annual assessment fees due
16 and have failed to submit a certificate of satisfactory completion of an approved continuing education course.
- 17 **7. Failure to Provide Bond:** The Department discovered that the surety bond of Bayside Financial
18 Corporation was cancelled June 15, 2001. To date, Bayside Financial Corporation has failed to notify the
19 Department of the cancellation of the surety bond or to provide the required bond.

20 **II. GROUNDS FOR ENTRY OF ORDER**

- 21 **1. Disclosure of Significant Developments:** Pursuant to WAC 208-660-150, the licensee must notify the
22 Director in writing within five days after a change in the licensee's status with the state of Washington Secretary
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of State. Also, the licensee must notify the Director in writing within thirty days after notification of the cancellation of their surety bond.

2. Continuing Education Requirement: Pursuant to RCW 19.146.215 and WAC 208-660-042, the designated broker of every licensee shall complete an annual continuing education requirement and file a certificate of satisfactory completion no later than the last business day of the month in which the anniversary date of the issuance of the mortgage broker's license occurs.

3. Requirement to Pay Required Fees: Pursuant to RCW 19.146.228 and WAC 208-660-060(3), each mortgage broker shall pay to the Director an annual assessment fee no later than the last business day of the month in which the anniversary date of the issuance of the mortgage broker's license occurs.

4. Requirement to Maintain Surety Bond: Pursuant to RCW 19.146.205(4)(a) every mortgage broker shall file and maintain a surety bond with the Department.

5. Authority to Revoke License: Pursuant to RCW 19.146.220(2)(b)(ii), (iii) and (iv), the Director may revoke a license for failure to pay a fee required by the Director, failure to comply with a directive of the Director, and failure to maintain the required bond.

6. Authority to Impose Fines: Pursuant to RCW 19.146.220(c), the Director may impose fines for failure to comply with a directive of the Director, and for any violations of RCW 19.146.205(4).

7. Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i) and (iv), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of RCW 19.146.205(4), and failure to comply with a directive of the Director.

8. Authority to Charge Examination Fee: Pursuant to RCW 19.146.228(2), and WAC 208-660-060(2), upon completion of any examination of the books and records of a licensee, the Department will furnish to the licensee a

1 billing to cover the cost of the examination. The examination charge will be calculated at the rate of forty-six dollars
2 and twenty-six cents (\$46.26) per hour that each staff person devoted to the examination.

3 **III. NOTICE OF INTENT TO ENTER ORDER**

4 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in
5 the above Facts and Grounds for Entry of Order constitute a basis for the entry of an Order under RCW 19.146.220,
6 which authorizes the Director to enter an Order against a person subject to the Act. Therefore, it is the Director's
7 intention to ORDER that:

- 8 1. Bayside Financial Corporation's license to conduct the business of mortgage broker be revoked;
- 9 2. Thomas R. Merritt be prohibited from participation in the conduct of the affairs of any licensed
10 mortgage broker, in any manner, for a period of five (5) years;
- 11 3. Bayside Financial Corporation and Thomas R. Merritt maintain records in compliance with the Act
12 and provide the Department with the location of the books, records and other information relating to
Bayside Financial Corporation's mortgage broker business, and the name, address and telephone number
of the individual responsible for the maintenance of such records in compliance with the Act; and
- 13 4. Respondents pay the cumulative annual assessments due through 2003 totaling \$1,044.81 (\$513.95 for
14 2001 plus \$530.86 for 2002);
- 15 5. Respondents pay an examination fee in the amount of \$231.30 calculated at \$46.26 per hour for each staff
hour devoted to the investigation (5 hours); and
- 16 6. Respondents pay a fine of \$3000 calculated at \$75.00 per day for 30 days.

17 **V. AUTHORITY AND PROCEDURE**

18 This Statement of Charges and Notice is entered pursuant to the provisions of RCW.19.146.220, RCW
19 19.146.221, and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (the Administrative
20 Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF
21 OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this order.

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1 Dated this 29th day of January, 2003.

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MARK THOMSON, DIRECTOR
DIVISION OF CONSUMER SERVICES
DEPARTMENT OF FINANCIAL INSTITUTIONS

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Reviewed by:

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Chuck Cross, Enforcement Chief

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RCW 19.146.205 License – Application – Exchange of fingerprint data with federal bureau of investigation – Fee – Bond or alternative.

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(4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection. [1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

RCW 19.146.215 Continuing education – Rules. The designated broker of every licensee shall complete an annual continuing education requirement, which the director shall define by rule. [1997 c 106 § 11; 1994 c 33 § 11.]

RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules. (1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

...
(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201(1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

...

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

...

(iv) Failure to comply with any directive or order of the director.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director – Hearing – Sanction. The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

RCW 19.146.223 Director – Administration and interpretation. The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

RCW 19.146.228 Fees – Rules – Exception. The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter;

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[1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

WAC 208-660-042 Continuing education requirement. (1) The principal or designated broker of a licensee must satisfactorily complete an approved continuing education course annually. Each licensee must file annually a certificate of satisfactory completion of an approved continuing education course by the licensee's principal or designated broker no later than the last business day of the month in which the anniversary date of the issuance of the licensee's license occurs.

(2) This section applies to each licensee beginning on the first anniversary date of the issuance of the licensee's license which occurs after December 31, 1995. (For example, if a licensee's license was issued on January 10, 1994, then the licensee must submit its first certificate of satisfactory completion of an approved continuing education course no later than the last business day of January 1996.)

WAC 208-660-060 Department's fees and assessments.

....
(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

WAC 208-660-150 Disclosure of significant developments. (1) A licensee must notify the director in writing within thirty days after the occurrence of any of the following developments:

....
(e) Receipt of notification of cancellation of the licensee's surety bond or approved alternative, or any significant decline in value of an approved alternative held by the director.

(f) The filing of any material litigation against the licensee.

(2) A licensee must notify the director in writing ten days prior to a change of the location of the licensee's principal place of business or any of its branch offices.

(3) A licensee must notify the director in writing within five days after a change in the licensee's:

(a) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(b) Mailing address or telephone number;

(c) President, partner, designated broker, or branch office manager;

(d) Trust account (e.g., change in the status, location, or account number);

(e) State master business license; or

(f) Standing with the state of Washington secretary of state.